

THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CHARLES THURSTON )  
 ) No. H-09-CV-3629  
 )  
 ) HOUSTON, TEXAS  
-vs- ) DECEMBER 22, 2009  
 ) 10:10 a.m.  
 )  
MERCK & CO., INC.; ELI )  
LILLY, INC. )

TRANSCRIPT OF CONFERENCE  
BEFORE THE HONORABLE LYNN N. HUGHES

A P P E A R A N C E S:

FOR PLAINTIFF:

PRO SE  
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OFFICIAL COURT REPORTER: JEANETTE C. BYERS, RPR, CSR

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPH,  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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1           THE COURT: Sorry to keep you waiting, but I had  
2 promised, after having avoided the phone call for a while,  
3 that I would take the call at ten. It was just work, I mean,  
4 that's all, just work.

5           All right. So we have two people from Lilly who just  
6 so much admire your work as lawyers that they're here to see  
7 how you do. Do I understand that correctly?

8           MS. FRAZIER: Yes, your Honor.

9           MR. HAMM: Yes, your Honor.

10          THE COURT: Okay. We've got him, Frazier, Johnson  
11 and Crouch.

12          Has anybody heard from Mr. Thurston this afternoon?

13          MS. CROUCH: I spoke with him yesterday and he  
14 confirmed that he would be here. We talked about, you know,  
15 confirming -- getting copies of medical records he has and he  
16 said he would bring them with him, but I have not seen him  
17 today.

18          THE COURT: Okay. I think I remember the extension  
19 but before -- but I -- I don't know what I did with it.

20          You didn't see anybody stuck in security downstairs,  
21 did you?

22          MS. CROUCH: We did not but we've been here for about  
23 an hour because we had a flight that --

24          THE COURT: Here it is.

25          (On phone to security).

1 THE COURT: This is Judge Hughes. You don't have a  
2 mature gentleman wandering around lost down there, do you.

3 I'm not talking about Judge Hittner. Do you have  
4 anybody lost down there?

5 Okay. Thank you, sir. Bye.

6 Where are y'all from?

7 MS. FRAZIER: We're from Shook, Hardy & Bacon here in  
8 Houston.

9 THE COURT: Okay. Is that a law firm?

10 MR. HAMM: Yes.

11 THE COURT: Well, I guess he hasn't talked to y'all.

12 MS. CROUCH: We've exchanged two letters notifying  
13 him of the initial conference and then it was changed to this  
14 date and then we spoke yesterday. But that's it, other than  
15 the exchanges that --

16 MS. FRAZIER: Mr. Thurston just arrived, sir.

17 MS. CROUCH: Oh, perfect.

18 MR. THURSTON: Good morning.

19 THE COURT: Just called down to the train station to  
20 see if you were --

21 MR. THURSTON: I got lost.

22 THE COURT: I was late so you turned out not to be  
23 late. We just got together.

24 All right. We've got Mr. Hamm, Miss Frazier,  
25 Miss Johnson and Miss Crouch.

1 MS. CROUCH: That's correct.

2 THE COURT: And she was just saying that you have  
3 some medical records.

4 MR. THURSTON: Yes.

5 THE COURT: I don't want to go through them right  
6 now, but we're just going to talk about the case. And these  
7 two folks are from Lilly. And they haven't appeared yet  
8 because they haven't been served.

9 MS. FRAZIER: Yeah, Lilly hasn't been properly served  
10 in the suit and has not made an appearance and does not --

11 THE COURT: They're just here to watch because they  
12 think I'm such a great judge or something.

13 But these folks are from the other one, Merck. You  
14 took some -- what was it, what drug?

15 MS. CROUCH: Zocor.

16 MS. JOHNSON: Zocor is the name of the drug.

17 THE COURT: Why does one take that?

18 MS. CROUCH: It's a cholesterol-reducing medication.

19 THE COURT: Mr. Thurston, what is it that you think  
20 this drug did to you?

21 MR. THURSTON: Caused muscle damage.

22 THE COURT: And how do you know that it was Zocor  
23 that caused the muscle damage and not --

24 MR. THURSTON: Because it's well-known that it causes  
25 muscle damage.

1           THE COURT: Well, I know, but meningitis causes  
2 insanity, sickness and death, but not everybody who has death  
3 or insanity gets it from meningitis. And everybody with  
4 meningitis -- some people have it and recover perfectly. So  
5 you've taken Zocor.

6           MR. THURSTON: Yes.

7           THE COURT: How long did you take it?

8           MR. THURSTON: For a year.

9           THE COURT: And did you take it under the guidance of  
10 a physician?

11          MR. THURSTON: Yes, sir.

12          THE COURT: Where was that?

13          MR. THURSTON: VA Hospital.

14          THE COURT: Here in Houston?

15          MR. THURSTON: Yes.

16          THE COURT: Who's your doctor.

17          MR. THURSTON: First that gave me Zocor was  
18 Dr. Walker.

19          THE COURT: I was just curious. I have a friend who  
20 used to work out there, but I'm not sure -- I think she was  
21 one of those administrator kind of doctors, didn't actually do  
22 any good for anybody.

23          Then how long ago was it you quit taking Zocor?

24          MR. THURSTON: About a year and a half --

25          THE COURT: And are you still taking.

1 MR. THURSTON: -- I mean about six months.

2 THE COURT: And are you still seeing the doctors at  
3 Veterans Administration?

4 MR. THURSTON: No.

5 THE COURT: Are you seeing any doctor?

6 MR. THURSTON: No.

7 THE COURT: Now, you mentioned something that Lilly  
8 produced, Zyprexa.

9 MS. FRAZIER: Zyprexa.

10 THE COURT: Z-y-p-r-e-x-a is the traditional way to  
11 spell it. Wouldn't you hate to have to name a drug. It's  
12 like naming a street. If you were building a subdivision in  
13 Houston, try to think of a street that's not already used.  
14 That's why you get all of these names after mountains and --

15 In order to succeed in a lawsuit you've got to  
16 connect your current physical problems to something that  
17 somebody should have done that not only is a known risk but it  
18 happens to be the cause in your case and that it was  
19 unreasonable and that the doctor prescribing it shouldn't have  
20 prescribed it because of the risk in whatever your condition  
21 was.

22 MR. THURSTON: This doctor -- I did have high  
23 cholesterol. I was 20 points above normal, 200, and so I took  
24 the cholesterol --

25 THE COURT: What would normal be?

1 MR. THURSTON: 200.

2 THE COURT: 200. So you were 220?

3 MR. THURSTON: Right.

4 THE COURT: Is that seriously -- I don't --

5 MR. THURSTON: No, borderline.

6 THE COURT: It's borderline?

7 MR. THURSTON: Right.

8 THE COURT: But the doctor performed physicals on you  
9 before he prescribed it and knew whatever your conditions  
10 were?

11 MR. THURSTON: Yes. I had extensive blood tests and  
12 cholesterol showed up, total cholesterol showed up as about  
13 normal. I already knew it was.

14 THE COURT: How did you know that?

15 MR. THURSTON: From past experience with other  
16 doctors long ago.

17 THE COURT: And how about Zyprexa, why did you take  
18 that?

19 MR. THURSTON: The doctor claimed I had an illness,  
20 which I didn't have. And then I was transferred to the VA  
21 Hospital and I was cured and had nothing to do with Zyprexa.  
22 I shouldn't have been given it in the first place. And I told  
23 the doctor not to give it to me and I'd sue him if he did  
24 because I got on the Internet in the hospital and I could see  
25 how many lawsuits had been filed against the company and I

1 didn't want to take a drug that so many people were not happy  
2 about and willing to sue the manufacturer. But the doctor  
3 prescribed it anyway.

4 THE COURT: You took it anyway.

5 MR. THURSTON: I didn't have any choice.

6 THE COURT: Could you not take it?

7 MR. THURSTON: I could not -- I did not have a  
8 choice. I had to take the drug. The doctor and nurse came by  
9 and said, "Here's what the doctor ordered. You have to take  
10 it."

11 THE COURT: What was the illness for which it was  
12 prescribed?

13 MR. THURSTON: Schizophrenia, which I did not have.

14 THE COURT: How long have you taken it?

15 MR. THURSTON: Well, I'm trying to get the hospital  
16 records and I --

17 THE COURT: Well, just roughly. They're more precise  
18 than I am.

19 MR. THURSTON: Months, but I don't know how many  
20 months.

21 THE COURT: But not like three years or something?

22 MR. THURSTON: No. The Zocor can be prescribed for a  
23 long time. Some patients do very well on it and some don't.  
24 But the real question is how many people do badly on the  
25 Zocor.

1 THE COURT: No. The question is whether it bothered  
2 you. Merck can kill a couple of hundred thousand people a  
3 year with stuff and if they don't hurt you with whatever their  
4 stuff you got, you don't have a claim.

5 MR. THURSTON: I never had muscle damage. It's not  
6 in my family and I never had such a thing in my life. I've  
7 been always athletic and a very strong person, very  
8 intelligent and I know my own body very well. I studied  
9 medicine for a long time and I knew it had to be. As soon as  
10 I realized what it was, I stopped taking it. I got on the  
11 Internet and I started researching about this drug and I found  
12 a lot of things and all the symptoms matched.

13 THE COURT: How old are you?

14 MR. THURSTON: 64.

15 THE COURT: That's terrible. That makes me the  
16 oldest person in the room. Close. Sort of close.

17 Have you taken other drugs?

18 MR. THURSTON: Yes.

19 THE COURT: I'm talking about the last ten years.

20 MR. THURSTON: Mostly antibiotics.

21 THE COURT: So you do not now have a doctor's opinion  
22 that the problems and weakness and pain -- is that the  
23 symptoms --

24 MR. THURSTON: Yes.

25 THE COURT: -- that you're feeling now are

1 pharmacologically or physiologically connected to Zocor?

2 MR. THURSTON: No, I'm not but I could obtain that.  
3 But I've been very busy trying to get the 12-page document  
4 that I sent you finished in time.

5 THE COURT: You know why I personally like  
6 Mr. Brokaw, he's neither a lawyer nor a doctor.

7 MR. THURSTON: Right.

8 THE COURT: Sure does speak a whole lot better than I  
9 do.

10 MR. THURSTON: But if you'll delay this decision  
11 until I can get that information, I would appreciate that very  
12 much.

13 THE COURT: Well --

14 MR. THURSTON: I also have found an attorney who I'm  
15 talking to and I've indicated this trial that I'm hoping for  
16 and he's willing to look at it closer and make a decision.  
17 He's very interested. He saw it on the Internet. I called  
18 his office and he returned my call and I outlined all the  
19 points. And he's very interested in meeting me, but he can  
20 only see me after the holidays.

21 THE COURT: That's true of almost everybody.

22 MR. THURSTON: Right. He can also argue in federal  
23 court. His name is Randal Kauffman. I believe he's near the  
24 Galleria.

25 THE COURT: But it would be, I guess, good if it

1 weren't this complicated, Mr. Thurston. Reflecting life in  
2 America, litigation is complicated. And while I would not  
3 ever do anything bad to you because you didn't have a lawyer,  
4 I also can't be your lawyer. Just like I wouldn't help her,  
5 I'm not going to help you.

6 MR. THURSTON: Right.

7 THE COURT: It's not my job. I'm pretty good at my  
8 job, but it's not helping lawyers or litigants trying to be  
9 patient while I listen.

10 What's wrong with Lilly's service?

11 MS. FRAZIER: Judge, Lilly's just never been served  
12 through an authorized agent.

13 THE COURT: You have to -- I don't know how you tried  
14 to serve them, but you have to serve them a particular way.

15 MR. THURSTON: They asked for information from the  
16 hospital. And I've written to the hospital twice and I  
17 haven't received a thing. I asked for the documents to be  
18 sent to the attorney in New York and I also asked at the same  
19 time to send me a copy. That was over a month and a half ago.  
20 And then I -- after a month, I haven't received anything, so  
21 about a week or so ago I sent another letter asking why they  
22 haven't sent it. If they haven't, please resend it and resend  
23 my copy. I haven't received anything from them yet.

24 THE COURT: Pretty soon we'll all be getting our  
25 medical care from the post office.

1 MR. THURSTON: I'm not too happy with their -- with  
2 no response.

3 THE COURT: I've dealt with them a good deal,  
4 fortunately, only in their litigation and not needing their  
5 medical care.

6 What are the symptoms that Zyprexa caused you?

7 MR. THURSTON: Mainly sexual drive is not there.  
8 It's -- actually both drugs can do the same thing. And it  
9 could be a combination, it was just so much that everything  
10 just fell apart and I'm not happy about that at all. But the  
11 muscle damage is always continuous and it's painful and it --  
12 for four days about a month ago I couldn't walk at all. And I  
13 treated myself with oils and vitamins and especially B  
14 vitamins and that seemed to help. That's, I believe, the only  
15 reason I'm walking today is because of what I did but I still  
16 can't lift my arms above my shoulders, especially my right  
17 arm. I just can't -- I can't lift it at all. It's very  
18 strange the way this attacks your muscles. It's very strange.  
19 And I've read this on the Internet. I went through the web  
20 site that had 650 people comment on this drug. And all the  
21 symptoms are very similar to mine, especially the pain below  
22 the kneecaps, which is very strange. This is very unusual.  
23 And it only comes from this drug. And the weakness in the  
24 ankles is very common as well as the shoulder pain is very  
25 common, very, very common.

1           THE COURT: Mr. Thurston, the Internet is a great  
2 invention but blogging it is what I call the gallop poll  
3 summit way of doing research. If somebody doesn't know  
4 anything and they call somebody who doesn't know anything and  
5 talk about it and you multiply that times a hundred, the sum  
6 is still zero. You actually have to have --

7           MR. THURSTON: I've been on the Internet. I'm a web  
8 blogger. And I've got a program with H. Telm (as understood)  
9 and myself. I have, if necessary, been on the Internet two  
10 years ahead of Bill Gates. I know exactly what to do on the  
11 Internet. I'm a very accomplished programmer.

12           THE COURT: You can't make Wikipedia cites correct by  
13 knowing how to do it.

14           MR. THURSTON: Yes. But I know a professional cite  
15 when I see one.

16           THE COURT: Wikipedia is a well-known site.

17           MR. THURSTON: Very well-known.

18           THE COURT: It's just -- the information is only  
19 about 72 percent right and you never know which 72 percent is  
20 right.

21           MR. THURSTON: I probably agree with that. I don't  
22 use that.

23           THE COURT: Blogs are just sports talk radio on the  
24 Internet regardless of the topic. So you should be very  
25 careful about doing things to your body based on information

1 from chat rooms and other things.

2 MR. THURSTON: I agree a hundred percent. I know  
3 where to stay away from certain things and I'm very confident  
4 on the Internet.

5 THE COURT: So you have a motion to dismiss.

6 MS. CROUCH: That's correct. I apologize. I lost my  
7 voice.

8 THE COURT: You better buy a better grade of cigars.

9 MS. CROUCH: I'll try to speak up. But, yes, we have  
10 a motion to dismiss on file on two grounds, one on Federal  
11 Rule of Civil Procedure 9(b) based on his failure to plead  
12 with particularity his cause of action, the elements of a  
13 viable cause of action; and then the other is based on  
14 12(b)(6) for failure to state a claim. And basically, as I'm  
15 sure you're aware, in September of 2003 with the House Bill 4,  
16 it was Texas Civil Practices and Remedies Code was enacted,  
17 82.07, which provides that if a warning that a company has  
18 pharmaceutical products --

19 THE COURT: All those numbers mean she has no  
20 personal life. That's what that means.

21 MS. CROUCH: I hope not. Maybe.

22 Basically means that all pharmaceutical products are  
23 approved by the FDA, that information in the warnings that  
24 accompany those products are presumed adequate. And I don't  
25 believe there's any dispute in this lawsuit that either Zocor

1 or Zyprexa labels have been approved by the FDA and,  
2 therefore, under Texas law we're entitled to a presumption of  
3 adequacy and, more significantly in this case with respect to  
4 the facts that Mr. Thurston has alleged, we attached to our  
5 motion a copy of the Zocor label which lists as its first  
6 potential side effect in the warning section the risk of  
7 myopathy and rhabdomyolysis, which explains that those two  
8 diseases or ailments manifest themselves as muscle pain and  
9 weakness so I think it --

10 THE COURT: When Merck discovered this, what are the  
11 circumstances of this side effect occurring? First dose?  
12 Second year?

13 MS. CROUCH: I think it --

14 THE COURT: There has to be a distribution.

15 MS. CROUCH: Well, I mean, I think there's properly  
16 different studies that say different things, but I think that  
17 we just -- the way our warning reads is that with, you know,  
18 continued use you may see a side effect of myopathy or  
19 rhabdomyolysis. And that the first indication that you are  
20 experiencing these sort of muscle pains you should discuss  
21 this with your doctor to determine whether staying on the drug  
22 is appropriate for you.

23 THE COURT: So do the studies have a slope to the  
24 incidents? Is it gradual or is it --

25 MISS JOHNSON: Our label states that risks increase

1 with higher doses and concomitant use.

2 THE COURT: Some side effects are heart attacks and  
3 so on. Your first sign is you're going to the floor. Other  
4 things, you start not sleeping a little or -- I don't know.  
5 So with this, the side effect of muscle pain and weakness is a  
6 gradual or --

7 MS. CROUCH: It's a -- I mean, I think the studies  
8 collectively, if you put them together, would show that it's a  
9 gradual effect, a potential gradual effect that some  
10 patients --

11 THE COURT: Those that have the effect is gradual.

12 MS. CROUCH: Right. I don't think that the majority  
13 of patients, I don't believe the study show that -- you know,  
14 that after one time of taking the drug you're immediately  
15 going to feel these muscle pains or weakness so --

16 THE COURT: If Lilly were in the suit, would it have  
17 the same problem?

18 MS. FRAZIER: No. Zyprexa is not a  
19 cholesterol-reducing agent.

20 THE COURT: I know, but with the regulatory  
21 prohibitions.

22 MS. FRAZIER: Yes, absolutely, 82.007 also applies to  
23 Lillie's Zyprexa which is FDA approved.

24 THE COURT: Is sexual dysfunction a listed side  
25 effect?

1 MS. FRAZIER: It is, as it is with many other drugs.

2 THE COURT: Seems to be. The one I like is something  
3 you see the disclaimer on television that it can cause head  
4 cold and menstrual cramps. Now, that's thrown in with a whole  
5 bunch of other stuff. Isn't that sort of hard to cause? The  
6 head cold you get from a -- but menstrual cramps -- first,  
7 half the population should be immune from that. I'd hate to  
8 take something and have cramps. All right.

9 MR. THURSTON: Muscle myopathy is the most important  
10 thing that I have.

11 THE COURT: And that's her --

12 MR. THURSTON: Right.

13 THE COURT: -- and her client but I can point at  
14 Merck.

15 MR. THURSTON: Right.

16 THE COURT: Did you, more or less, follow what they  
17 were saying?

18 MR. THURSTON: Yes.

19 THE COURT: That it's a state law that says if the  
20 federal government approves a drug, the disclosures that are  
21 made that are required by the FDA are presumptively adequate  
22 and --

23 MR. THURSTON: I understand all that precisely.

24 THE COURT: Okay. Later on they would get to it's  
25 your responsibility, not to say other people had this problem,

1 but that you have it and that you have it as an direct  
2 consequence of taking that drug not of something else.

3 MR. THURSTON: Right.

4 THE COURT: And, as I understand it, you do not now  
5 have a physician who will say that he's performed the  
6 responsible tests for either of these conditions and that  
7 based on his knowledge of the volume and timing of your use,  
8 your preexisting condition and reasonable medical probability,  
9 your muscle weakness is a result of the drugs.

10 MR. THURSTON: I do not, but I can get it.

11 THE COURT: Well, even with that as long it fits the  
12 statute, that's not enough to overcome the statute. You've  
13 got to show that Merck knew that a significant number of users  
14 in the age group that it was intended for at the dosage that  
15 it was intended for would develop your condition somehow  
16 making them having been fully aware that it was an undisclosed  
17 risk.

18 MR. THURSTON: Well, my age group has something to do  
19 with that, also. It's now known that they've added the 65 or  
20 older. And when I was taking the drug I was 62, and -- but  
21 still I was close to 65.

22 THE COURT: 65 and older is like being able to vote  
23 at 18, which I still think is a mistake. I had to wait until  
24 I was 21, so should everybody else. You weren't 65. The  
25 warning says 65 or older.

1 MR. THURSTON: There wasn't a warning on any age --

2 THE COURT: Now it does. And, Mr. Thurston, only  
3 politicians can go back and pretend that it's 1950 and we're  
4 going to apply 2009 standards to what happened back then. You  
5 have to apply the standards to what you did at the time you  
6 did it --

7 MR. THURSTON: Right.

8 THE COURT: -- because nobody's prescribing you this  
9 drug now, are they?

10 MR. THURSTON: No.

11 THE COURT: And nobody's giving it to you.

12 MR. THURSTON: No one will ever give it to me again.  
13 I'll never take it.

14 THE COURT: Well, if you won't take it, then no point  
15 in giving it to you. My point is, when you took the drug it  
16 didn't even say don't do it over 65. It now does and you're  
17 not yet over 65 so it just doesn't matter.

18 MR. THURSTON: Yes, it does. It generally -- the age  
19 limit will probably be lowered in the future to 62.

20 THE COURT: And it won't matter because you're not  
21 taking it and you're not 62 anymore. This is not -- I'm not  
22 Geraldo. This is not about sharing feelings and what may  
23 happen. It's about actual medical, scientific, physiological,  
24 pharmacological facts. It's not just you're upset because you  
25 had an adverse outcome from a medical procedure. You probably

1 know with your maturity there are no drugs without side  
2 effects. There's no operations without risks. There's  
3 probably not even a physical that you get without some risk.  
4 They take blood, they can mess it up. That's what life's like  
5 itself. The law is not here just to give you a bunch of money  
6 from pharmaceutical companies who actually get it from people  
7 like you. The rules are there in case somebody does something  
8 that can be objectively established who was beyond the limit  
9 set by the law, not that you're unhappy. I'm unhappy about a  
10 lot of things, unfortunately -- probably fortunately. There's  
11 no law that would allow me to recover from my unhappiness. So  
12 it's not that Merck is evil -- and they may be. I don't care.  
13 Bad people are right, good people are wrong all the time. I  
14 deal with people, neither side has done anything wrong, but  
15 somebody has to share a substantial loss. Justice is as cold  
16 as a mother-in-law's love. Trying to be precise we apply  
17 established rules to the known facts.

18           So the question is: Was there something that Merck  
19 should have known when you took the drug that would have made  
20 it dangerously unreasonable and they knew at the time and  
21 didn't disclose it to the FDA and all kinds of stuff like  
22 that, which is virtually impossible.

23           MR. THURSTON: Yes, muscle biopsy.

24           THE COURT: That doesn't prove what Merck knew or  
25 could have known or what the FDA knew or should have known.

1           MR. THURSTON: My blood was tested for systatisfine  
2 (as understood) and it never appeared because the doctor would  
3 have stopped the drug if it did. But now we know, what the  
4 Canadians studied, that it takes a muscle biopsy to check for  
5 this enzyme in the muscle itself. That's the only way you can  
6 determine that there's muscle damage. And I never had a  
7 biopsy while I was on this drug and, therefore, it was unsafe  
8 for me.

9           THE COURT: That's a medical problem. You can sue  
10 the VA, probably wouldn't do any good, but Merck didn't  
11 prescribe it, Merck compounded it. You had what the law  
12 describes euphemistically as a learned intermediary. The law  
13 protects you from bad drugs by regulating the drug  
14 manufacturers, the pharmacists and the physicians before you  
15 get three regulated entities handling it. But if you're  
16 unhappy that you were not properly tested, Merck doesn't test  
17 people.

18           MR. THURSTON: No, I was not properly tested.

19           THE COURT: They sit in Michigan and make pills. But  
20 that's a problem between you and the VA, not between you and  
21 Merck and Lilly.

22           MR. THURSTON: I feel if a drug damages your body,  
23 you should get compensation; just like if somebody hits you  
24 with an automobile, you should get compensation.

25           THE COURT: And that's a good feeling. It's just not

1 the law. People don't feel like they ought to have to pay  
2 their mortgage. It just doesn't translate into something that  
3 can be enforced in a court of law. And if that had been the  
4 rule for a last quarter of a century, you would probably be  
5 dead because many of the things that keep us alive could not  
6 have been produced economically, you couldn't afford it or  
7 they wouldn't have been able to find even a market to produce  
8 them and they wouldn't have produced them. That's not free  
9 money, it comes from the consumers of drugs.

10           You've already seen the quality of government, quote,  
11 unquote, free medical care. First you had to go get shot at  
12 to get it in the first place. And then that hardly makes it  
13 free, but the quality is something less than you deserve as a  
14 veteran. We should give you a credit card and let you go to  
15 any doctor you want to get what you need. So that's the legal  
16 posture of the case.

17           They've got a statute that says FDA approves it, it's  
18 okay. There's a statute that says if the doctor stands  
19 between you and them and looks at you and looks at the drugs  
20 and knows the warnings and understands, perhaps better than  
21 you do, what the risks reveal by the warnings are, then  
22 they're not liable because the doctor made a mistake in giving  
23 it to an unsuitable patient.

24           And then, of course, there is the question of whether  
25 your problems are, in fact, caused by Zocor. And the papers

1 you filed, these nice lawyers say, have not described  
2 exceptions to those statutes or even the physical circumstance  
3 of causation sufficiently.

4 When do you think you're going to talk to this  
5 lawyer?

6 MR. THURSTON: After January 1st. That's the lead I  
7 had so far. He seems very interested.

8 THE COURT: Okay. So we're already about a month  
9 after your motion to dismiss was ready; right?

10 MS. CROUCH: After it was filed?

11 THE COURT: No, after -- 20 days after it was filed.

12 MS. CROUCH: Oh, yes, we are because there was an  
13 extension.

14 THE COURT: 30 days or so.

15 Mr. Thurston, I'm going to extend the time for you to  
16 respond to Merck's motion to dismiss until January 11th. That  
17 gives you about three times the rule.

18 MR. THURSTON: That should do it.

19 THE COURT: But --

20 MR. THURSTON: I'm not an attorney. And I appreciate  
21 that.

22 THE COURT: I understand. I can't just keep being  
23 nice to you. For one reason, then they'll start expecting me  
24 to be nice to them and I can't do that.

25 MR. THURSTON: I understand.

1 THE COURT: It would ruin my reputation, if nothing  
2 else. Do you have any questions?

3 MR. THURSTON: Not really. I thought my report was  
4 pretty concise.

5 THE COURT: Okay. I think we're getting everything  
6 that you filed.

7 MR. THURSTON: Okay.

8 THE COURT: We seem to be getting it.

9 MS. CROUCH: We received his response, correct, to  
10 the motion to dismiss.

11 THE COURT: Is that the one that says it's a lot of  
12 crap?

13 MS. CROUCH: Just making sure. So is the extension  
14 an opportunity for us --

15 THE COURT: An analysis of your work.

16 MS. CROUCH: It was hard to swallow, but I understand  
17 from his perspective why he thought that --

18 THE COURT: I had a guy with five murder convictions.  
19 I wasn't something, but I was grouchy.

20 MS. CROUCH: Can I be clear, are you extending his  
21 time to file another -- an additional response on his own  
22 behalf or are you anticipating that his next response should  
23 be from an attorney?

24 THE COURT: For a further response.

25 MS. CROUCH: Further response.

1 THE COURT: However, I'm not limiting him. And then  
2 I'll have to look at it then.

3 MR. THURSTON: Okay.

4 THE COURT: And just so you understand, they're not  
5 really here because -- was it Rule 4 where all the -- how you  
6 have to serve them?

7 MS. FRAZIER: Yes.

8 THE COURT: And that thing about principal place of  
9 business is kind of tricky. It's where they say their  
10 principal place of business is. Lots of people sue Dow  
11 Chemical because their largest plant is down there.

12 MR. THURSTON: I don't understand what you're saying,  
13 no.

14 THE COURT: Well, you've got to serve them the way  
15 the rule prescribes which talk about president, vice president  
16 or secretary or some registered agent. And you've got to  
17 serve it on them by a process server, deputy sheriff or  
18 private process server. I don't even know where Lilly is, in  
19 Chicago or Indianapolis or somewhere.

20 MS. FRAZIER: Indianapolis.

21 THE COURT: Anything else?

22 MS. CROUCH: I don't believe so at this time. We'll  
23 just wait on additional response.

24 THE COURT: Anything else?

25 MR. HAMM: I don't think so.

1 MS. FRAZIER: No.

2 MR. HAMM: No.

3 MR. THURSTON: No.

4 THE COURT: All right. Thank you for coming down.

5 MS. CROUCH: Thank you for having us.

6 (Court recessed at 11:16 a.m.)

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9

10 I certify that the foregoing is a correct transcript  
11 from the record of the proceedings in the above-entitled  
12 matter.

11

12

/s/

13

JEANETTE BYERS, RPR

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August 3, 2010

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